

MICHAEL IZELL SEALS,

Plaintiff,

v.

OFFICER JOHN RUSSELL, et al.,

Defendants.

No. C 04-1569 SBA (PR)

**NOTICE REGARDING INABILITY TO  
SERVE DEFENDANTS EFESTIONE AND  
RIEDLE**

While Plaintiff may rely on service by the United States Marshal, "a plaintiff may not remain silent and do nothing to effectuate such service. At a minimum, a plaintiff should request service upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has knowledge." Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). If the marshal is unable to effectuate service and the plaintiff is informed, the plaintiff must seek to remedy the situation or face dismissal of the claims regarding that defendant under Federal Rule of Civil

1 Procedure 4(m). See Fed. R. Civ. P. 4(m) (If service of the summons and complaint is not made  
2 upon a defendant in 120 days after the filing of the complaint, the action must be dismissed  
3 without prejudice as to that defendant absent a showing of "good cause."); see also Walker v.  
4 Sumner, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (prisoner failed to show cause why prison official  
5 should not be dismissed under Rule 4(m) because prisoner did not prove that he provided  
6 marshal with sufficient information to serve official).

7 No later than **thirty (30) days** from the date of this Order, Plaintiff must provide the  
8 Court with the current addresses for Defendants Efestione and Riedle. Plaintiff should review  
9 the federal discovery rules, Rules 26-37 of the Federal Rules of Civil Procedure, for guidance  
10 about how to determine the current addresses of Defendants Efestione and Riedle.

11 **If Director Ferguson is unable to furnish the Court with the current addresses of**  
12 **Defendants Efestione and Riedle, and if Plaintiff fails to provide the Court with their**  
13 **current addresses within the thirty-day deadline, all claims against Defendants Efestione**  
14 **and Riedle will be dismissed without prejudice under Rule 4(m).**

15 IT IS SO ORDERED.

16 DATED: 11/29/07

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18 SAUNDRA BROWN ARMSTRONG  
19 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SEALS,

Case Number: CV04-01569 SBA

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

RUSSELL et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 30, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Izell Seals V77488  
California State Prison - San Quentin  
San Quentin, CA 94974

Dated: November 30, 2007

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk